IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3616 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

`AMUL EMPLOYEES(UNION) ASSO.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3616 of 1989

MR GM JOSHI for Petitioner No. 1

MR RC KODEKAR ASSTT GOVT PLEADER for Respondent No. 1

MR DG CHAUHAN for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr.G.M.Joshi on behalf of the petitioner and learned advocate Mr.D.G.Chauhan for

respondent No.2, so also, learned AGP Mr.R.C.Kodekar for respondent No.1.

In the present petition, the petitioner has challenged the order passed by the respondent No.1 dated 18th February, 1989 while exercising the powers under Section 12[5] of the Industrial Disputes Act, 1947 and decided not to refer the matter i.e. industrial dispute raised by the Union for adjudication. The dispute which was raised by the Union that they entitled to 20 % bonus for the year 1986-87 on the ground that the respondent company has received NPC award. Before the Conciliation Officer, statement was filed by the Union and counter to that, has also been filed by the management. Ultimately, the matter was not settled with the Conciliation Officer and the Conciliation Officer sent the failure report to the State Government. However, the Government has not referred the industrial dispute on the ground that the payment of bonus is regulated under the provisions of Bonus Act and therefore, such demand cannot be referred for adjudication.

I have heard learned advocates appearing on behalf of the respective parties at length and considered the vehement arguments made on their behalf. After considering the submissions, according to my opinion, the reason given by the State Government - Respondent No.1 is contrary to the settled principles of law laid down by the Apex Court in case of TELCO reported in AIR 1989 SC 1565. No doubt, bonus has been regulated to the provisions of the Bonus Act but there is no bar to raise the industrial dispute to demand more amount of bonus from the employer and for that, it is open for the workmen to raise the industrial dispute and ultimately, the adjudicating authority is only the appropriate authority who can examine the matter and to pass appropriate orders on merits after hearing the respective parties. Therefore, considering these facts, according to my opinion, reason given by the respondent No.1 is not just and proper and contrary to the law. Therefore, this matter requires reconsideration by the State Government. In my opinion, the respondent No.1 has committed gross error in not referring the industrial dispute for adjudication on the ground that demand of bonus is regulated by the provisions of the Bonus Act. Therefore, the order dated 18th February, 1989 is required to be quashed and set aside in the interest of justice.

In the result, present petition is allowed. The impugned order passed by the respondent No.1 - State Government dated 18th February, 1989 is hereby quashed

and set aside with direction to the respondent No.1 to reconsider the matter after giving reasonable opportunity to the respective parties and to pass appropriate orders as per the settled law laid down by the Apex Court within two months from the date of receipt of copy of this order.

Rule is made absolute accordingly. No order as to costs.

Direct Service permitted.

Date : 15.1.2004 [H.K.Rathod, J.]

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